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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1604

CENTRAL MACHINERY COMPANY, *Appellant,*

v.

STATE OF ARIZONA,
STATE TAX COMMISSION OF ARIZONA, *Appellee.*

On Appeal from the Supreme Court of Arizona

APPELLANT'S BRIEF

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APPELLANT'S BRIEF

OPINIONS BELOW

The opinion of the Supreme Court of Arizona is reported at 589 P.2d 426 (1978). The opinion of the Superior Court of Arizona for Maricopa County is unreported. Both opinions are printed at J.S. pp. 4a-14a.

JURISDICTION

The decision of the Supreme Court of Arizona was entered on December 4, 1978. A timely motion for rehearing was denied on January 23, 1979. Notice of

appeal to this Court was filed with the Supreme Court of Arizona on April 18, 1979, and the appeal was docketed on April 19, 1979. Probable jurisdiction was noted on October 1, 1979. Jurisdiction of this Court is invoked under 28 U.S.C 1257(2).

LAWS INVOLVED

The following are set out at J.S. pp. 1a-4a:

1. Ariz. Rev. Stat. 42-1309, 1312, 1361.
2. Act of Feb. 28, 1859, c. 66, 11 Stat. 388, 401.
3. 25 U.S.C. 261-264.

QUESTION PRESENTED

Did Arizona have jurisdiction to tax the sale of farm machinery by an Arizona corporation to an Indian tribe, where the sale took place within the tribe's reservation under the supervision of the Bureau of Indian Affairs?

STATEMENT OF THE CASE

The facts are not disputed and were stipulated by the parties. This case arises from a sale of eleven farm tractors by Central Machinery Company to Gila River Farms in 1973. Central Machinery Company is an Arizona corporation located at Casa Grande, Arizona. Gila River Farms, an enterprise wholly owned and operated by the Gila River Indian Community, farms tribal and individual trust land within the Gila River Reservation in south central Arizona.[1] The sale of the farm

[1] The Gila River Reservation is the reservation of the Gila River Indian Community, a federally recognized tribe organized under section 16 of the Indian Reorganization Act, 25 U.S.C. 476. The Gila River Indian Community includes Pima and Maricopa Indians.

equipment was solicited on the Reservation by Central Machinery, and the contract was made there. Payment for, and delivery of, the tractors also took place on the reservation.

The sales transaction was carried out under the supervision of the Superintendent of the Pima Agency, Bureau of Indian Affairs. The Plan of Operation of Gila River Farms, which provided for the purchase of farm equipment, was approved by the Superintendent and by his superior, the Area Director at Phoenix. Money was allocated for equipment in the Gila River Farms budget, which was also approved by the Superintendent and Area Director. Central Machinery did not possess a federal license to engage in continuous retail trade with Indians on the Gila River Reservation, nor did it have a permanent place of business on the reservation.

The Pima and Maricopa Indians and their ancestors have lived in and around the Gila River Valley for centuries.[2] The surrounding mountains are arid and forbidding, and the valley itself is hot and dry, but the land is fertile if irrigated, and the River has been used for this purpose since time immemorial.[3]

The Pimas and Maricopas are essentially agricultural people.[4] For them the Gila River valley was and is extremely valuable. Sophisticated methods of crop

[2] Gila River Pima-Maricopa Indian Community v. United States, 24 Ind.Cl.Comm. 301, 318 (1970).

[3] A. Bandelier, Final Report of Investigations among the Indians of the Southwestern United States 406 (John Wilson and Sons Univ. Press. (1890).

[4] *Id.* at 254.

irrigation have been used by them at least since the time of first white contact, and probably much earlier.[5] Their ancient predecessors, whom anthropologists call the Hohokam (a Pima word), used extremely elaborate and extensive irrigation methods in ancient times.[6]

In 1859, Congress authorized the President to establish a reservation for the Pima and Maricopa Indians in the area traditionally farmed by them near the Gila River in the Arizona portion of the Territory of New Mexico.[7] Additions were made to the reservation in a series of executive orders beginning in 1876,[8] because the original reservation did not encompass all of their traditional villages and fields.[9] Farming activities have been pursued continuously since that time by the Pimas and Maricopas, and tribal farming is presently a principel source of income for them.[10] After upstream non-Indian farmers diverted the water supply, Congress assisted tribal irrigated farming by providing funds for the construction of a modern irrigation system for lands in the vicinity of the Sacaton.[11] Funds

[5] N. 2 *supra*, 24 Ind.Cl.Comm. at 319.

[6] *Id.;* United States v. Gila River Pima Maricopa Indian Community, 586 F.2d 209, 211 (Ct.Cl. 1978).

[7] Act of Feb. 28, 1859, c. 66, 11 Stat. 388, 401 §§ 3-5; *see* J.S. pp. 2a-3a.

[8] Executive Orders of Aug. 31, 1876; Jan. 10, 1879; June 14, 1879; May 5, 1882; Nov. 15, 1883 in 1 C. Kappler, Indian Affairs, Laws and Treaties, 806-08; Executive Orders of Oct. 23, 1911; July 31, 1911 in 3 C. Kappler *supra* at 668.

[9] N. 2 *supra*, 24 Ind.Cl.Comm. at 333.

[10] Federal and State Indian Reservations and Indian Trust Areas, 51-52 (U.S. Dept. of Commerce 1974).

[11] United States v. Gila River Pima-Maricopa Indian Community, *supra* 586 F.2d at 211-12.

have since been provided for maintenance of the system.[12]

When Gila River Farms purchased farm tractors from Central Machinery, a tax in the amount of $2,916.62 was imposed on the sale by the State. Arizona levies a business privilege tax on persons doing business within the State, measured by the gross proceeds of sales within the State. Ariz. Rev. Stat. 42-1309, 1312, 1361, printed at J.S. pp. 1a-2a. This tax was added by Central Machinery as a separate item to the price of the farm machinery and was paid under protest by Gila River Farms. Central Machinery Company in turn paid the tax to the State under protest.

Central Machinery agreed to pay over any recovery to Gila River Farms, and appropriate administrative proceedings to claim a refund under Arizona law were initiated. The administrative application was denied, and Central Machinery brought this refund action in the Superior Court of Arizona for Maricopa County. That court held that Arizona had no jurisdiction to tax the transaction and ordered a refund. J.S. pp. 4a-6a. The Arizona Supreme Court reversed, one justice dissenting. J.S. pp. 7a-14a.

ARGUMENT

ARIZONA LACKS JURISDICTION TO TAX SALES TO GILA RIVER FARMS WITHIN THE GILA RIVER RESERVATION

A. The Federal Laws and Regulations Governing Indian Country Trade Preempt State Jurisdiction.

1. Review of the Warren Decision and Applicable Laws.

In *Warren Trading Post Co.* v. *Arizona Tax Comm'n*, 380 U.S. 685 (1965), the Court held that the

[12] *Id.*

federal statutes and regulations governing trade with Indians in Indian country preempted Arizona's jurisdiction to impose the same tax now at issue.[13] There as here the taxpayer was an Arizona corporation engaged in retail sales. In both cases the sales occurred within a tribal reservation.

In *Warren* the Court reviewed the statutes and regulations governing Indian trade and concluded that Congress "has undertaken to regulate reservation trading in such a comprehensive way that there is no room for the States to legislate on the subject." 380 U.S. at 691. *See Rockbridge* v. *Lincoln,* 449 F.2d 567, 570-71 (9th Cir. 1971). The assessment and collection of the tax at issue here was held to "frustrate the evident congressional purpose of insuring that no burden be imposed upon Indian traders trading with Indians on reservations except as authorized by Acts of Congress or by valid regulations promulgated under those Acts." 380 U.S. at 691.

Regulation of Indians affairs has traditionally and historically been an area in which the interest of the federal government is so dominant that state regulation is often precluded. *See Worcester* v. *Georgia,* 31 U.S. (6 Pet.) 515, 557 (1832). The power of Congress to legislate in the area of trade with Indians is derived from Article I, Section 8, Clause 3 of the Constitution, which confers authority on Congress to regulate commerce with the Indian tribes.

Trade with Indians and tribes in tribal territory has in fact been the subject of close federal supervision since 1790. Forfeiture of all goods of an unauthorized

[13] Compare J.S. pp. 1a-2a with 380 U.S. at 686 n. 1.

seller has been a penalty since the first statute.[14] Other penalties and prohibitions were subsequently added.[15] The basic purpose of Congress was and is to deter fraud and overreaching of the Indians in order to carry out the trust obligations of the United States to a dependent people.[16]

The present statutes commit to the Commissioner of Indian Affairs "the sole power and authority to appoint traders to the Indian tribes." 25 U.S.C. 261.[17] The same section gives the Commissioner "sole power and authority" to make rules and regulations "specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians." 25

[14] 1 Stat. 137, § 3 (1790). The same penalty has appeared in every subsequent statute: 1 Stat. 329, § 3 (1793); 1 Stat. 471, § 8 (1796); 1 Stat. 745, § 8 (1799); 2 Stat. 142, § 8 (1802); 3 Stat. 332, § 2 (1816); 4 Stat. 729, § 4 (1834); R.S. 2133 (1873); 25 U.S.C. 264.

[15] Beginning with the 1793 Trade and Intercourse Act, 1 Stat. 329, § 3, the Indian trading laws have continuously included monetary penalties for unauthorized trade. Some requirements have also been backed by imprisonment as a penalty, *e.g.*, 2 Stat. 142, § 10 (unauthorized purchase of Indian horses), § 12 (unauthorized purchase of Indian land). A general review of the laws is found in F. Cohen, Handbook of Federal Indian Law 348-51 (U.S. Dept. Of Interior 1942).

[16] Rockbridge v. Lincoln, 449 F.2d 567, 570-71 (9th Cir. 1971); Cohen, *supra* n. 15 at 348-51 (describing trade with the Indian tribes as presenting "unlimited opportunities for corruption and extortion," p. 348); H.R. Rep. No. 474, 23rd Cong. 1st Sess. 11 (1834) (laws needed to control "fraud and imposition" on Indians).

[17] Control of Indian affairs was originally in the War Department and was transferred to the Interior Department in 1849. Cohen, *supra* n.15 at 10-11. Congress' permanent delegation of authority to the Commissioner of Indian Affairs in what is now 25 U.S.C. 261 was made in 1876. 19 Stat. 200, § 5.

U.S.C. 262 subjects "any person desiring to trade with the Indians on any Indian reservation" to the Commissioner's authority. 25 U.S.C. 263 authorizes the President to prohibit the introduction of "any particular article, into the country belonging to any Indian tribe." 25 U.S.C. 264 penalizes unlicensed trade, introduction of goods, or residence on a reservation for the purpose of trade.[18] The Commissioner has issued comprehensive regulations to carry out the statutory mandate. 25 C.F.R. pts. 251, 252.[19]

As this Court recognized in *Warren,* federal stauttory control over Indian commerce has mostly been confined to tribal territory. 380 U.S. at 690 n. 14.[20] The Indian Trade and Intercourse Act of 1970 regulated anyone who would attempt "to trade with the Indian tribes, or be found in the Indian country" with merchandise for sale to Indians.[21] The Act of 1793 had the same provision with an exception from the passport requirement for persons "merely travelling through any Indian town or territory." [22] The Acts of 1796, 1799 and 1802 had trade provisions applicable to "towns, or hunting camps, of any of the Indian tribes";

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[18] 25 U.S.C. 263, 264 are based on §§ 3, 4 of the Indian Trade and Intercourse Act of 1834, 4 Stat. 729. 25 U.S.C. 261, 262 replaced parts of §§ 2, 3 of that Act.

[19] The regulations in force at the time Felix Cohen compiled his Handbook are discussed in Cohen, *supra* n.15 at 349-50.

[20] Two notable exceptions have been the control over Indian land rights wherever located, *see* 25 U.S.C. 81, 177, 323-416j; and the former prohibition of liquor sales to Indians, *see* 18 U.S.C. 1154, 1161.

[21] 1 Stat. 137, § 3 (1790).

[22] 1 Stat. 329, § 3 (1793).

"the Indian territory"; and "the Indian country." [23] An 1816 amendment to the 1802 Act applied to trade on lands held in "Indian title." [24]

The Indian Trade and Intercourse Act of 1834 made "Indian country" the sole term of place for its trade regulation provisions.[25] Indian country has been the basic term since that time and is now defined by statute.[26] It is undisputed that the Gila River Reservation, where the sale at issue took place, is within the statutory coverage of the trading laws.[27] In *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973), the Court sustained a state gross receipts tax (much like the tax now at issue) imposed on a tribal business enterprise. The tax was sustained expressly because the enterprise was off-reservation, and the Court emphasized that the rule is otherwise within tribal territory. 411 U.S. at 148.

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[23] 1 Stat. 471, §§ 7, 8, 10 (1796); 1 Stat. 745, §§ 7, 8, 10 (1799); 2 Stat. 142, §§ 7, 8, 10 (1802).

[24] 3 Stat. 332, §§ 2, 3 (1816).

[25] 4 Stat. 729, §§1-7 (1834). Other provisions did not refer to "Indian country," *e.g.,* §§ 11, 12, protecting Indian land ownership.

[26] 18 U.S.C. 1151; *see,* United States v. John, 437 U.S. 634 (1978). This statute is in the criminal code, but the Court has indicated "that it generally applies as well to questions of civil jurisdiction." DeCoteau v. District County Court, 420 U.S. 425, 427 n. 2 (1975). Congress has done the same, *e.g.,* 25 U.S.C. 1322.

[27] 25 U.S.C. 264 refers to Indian country, but it also applies to "any Indian reservation." The latter reference seems redundant under the current statute, 18 U.S.C. 1151. It was added in 1882, 22 Stat. 179, when there was no statutory definition of Indian country and thus possible doubt whether all reservations were Indian country. This Court probably settled the question by holding that a California reservation was Indian country in Donnelly v. United States, 228 U.S. 243 (1913).

2. The sale Was Not Taxable, Because It Was Subject to the Indian Trading Laws.

The federal laws regulating trade with Indians govern a sale to a tribe within Indian country. Trade with tribes is included in the terms of the statutes and regulations.[28] 25 U.S.C. 264, which indicates Congress' view of the scope of federal control, includes any person ("other than an Indian of the full blood") who attempts to introduce goods into Indian country or to trade therein, and these requirements are stated distinctly from the authority over resident merchants.[29] The statutes and regulations apply to any commercial transaction in Indian country involving Indians. *See, United States ex rel. Hornell* v. *One 1976 Chevrolet Station Wagon,* 585 F.2d 978 (10th Cir. 1978).

The statutory purposes also encompass the transaction at issue. The federal regulatory goal to deter fraud and imposition on Indians would be easily circumvented if a seller could avoid regulation by the device of selling to Indian tribes as collective entities rather than to individuals. Because some tribes have recently achieved a degree of sophistication in modern business dealings, this proposition may be less absolute than formerly. But the laws at issue were enacted

[28] *See* 25 U.S.C. 261, 263; 25 C.F.R. 251.1, 251.2. *See also* R.S. 2128, 2132; U.S. Const. art. I, § 8, cl. 3, referring to "commerce with the Indian tribes." *Cf.*, Wilson v. Omaha Indian Tribe, —— U.S. ——, 61 L.Ed.2d 153 (1979), where the Court held that the term "Indians" in another section of the 1834 Trade and Intercourse Act, now 25 U.S.C. 194, includes tribes. 61 L.Ed.2d at 164-65.

[29] As noted previously, the relevant part of 25 U.S.C. 264 is unchanged since 1834, and its essential purpose has been part of the federal statutes since 1790. N. 14-18 *supra* and accompanying text.

in the early years of the Republic, when conditions were different. The laws must be interpreted in light of the circumstances of the years in which they were enacted. *Oliphant* v. *Suquamish Indian Tribe,* 435 U.S. 191, 206 (1978); *see, Wilson* v. *Omaha Indian Tribe,* —— U.S. ——, 61 L.Ed.2d 153, 165 (1979). It is for Congress to change the laws when it determines that conditions warrant amendments.

Since the transaction was subject to the trading laws, Arizona's jurisdiction to tax it was preempted. The manner and validity of the execution of the laws in any particular case cannot alter the scope of the statutes. *See* the views of the trial court and dissenting justice below, J.S. pp. 4a-6a, 10a-14a.

3. The Form of Federal Supervision Is Immaterial.

Arizona has attempted to distinguish this case from *Warren* by arguing that the transaction involved was outside the scope of the Indian trading laws, because Central Machinery did not have a federal license to engage in continuous retail trade with individual Indians on the reservation. The court below also relied on this distinction. J.S. p. 9a. This contention will not withstand analysis.

Administrative practice in enforcement of the Indian trading laws falls into three categories. The type of administrative supervision depends on the nature of the transaction involved and the degree to which the transaction would otherwise be unsupervised. First, resident merchants who deal regularly with individual reservation Indians are licensed after a rigorous application process requiring detailed information about the applicant and the type of business to

be established. 25 C.F.R. 251.9(a), 252.5. Approval of the Commissioner of Indian Affairs in Washington is required for these licenses. Second, the local Superintendent is authorized to give a license or permit to "itinerant peddlers" to trade with Indians on a reservation. 25 C.F.R. 251.9(b). This trade is of a more limited character, and the degree of supervision is correspondingly more limited. Third, trade with Indian tribes is subject to federal approval through direct supervision of the expenditure of tribal funds. No formal license is required, because transactions involving tribal funds are required to be supervised by statute.[30] There are added legal requirements of federal supervision where a tribal purchase relates to the use of tribal trust land or a federally-assisted Indian irrigation project.[31] All of these bases for supervision of tribal purchases were present in the case of Gila River Farms.

The sale of farm machinery to Gila River Farms was accomplished under the supervision of the Superintendent of the Pima Agency of the Bureau of Indian Affairs. As noted in the Statement of the Case, the expenditures of Gila River Farm were (and are) subject to approval of both the Superintendent and his superior, the Area Director at Phoenix. The Bureau's involvement in the transaction was much greater than is the case for transactions with individual Indians on a reservation. Under these circum-

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[30] *See, e.g.,* 25 U.S.C. 81-88, 111-165; 25 C.F.R. pt. 105. Other rules are contained in the Bureau of Indian Affairs Manual. *See, e.g.,* 83 BIAM ch. 6, detailing supervision over tribal budgets.

[31] *See* United States v. Gila River Pima-Maricopa Indian Community, *supra* 586 F.2d at 212; 25 C.F.R. 221.69a *et seq.; see also,* 25 U.S.C. 81, 177, 383-415d; 25 C.F.R. pts. 191, 211, 221.

stances the issuance of a license permitting the activity would have been pointless. In other words, a formal license is used to authorize otherwise unsupervised trade with individual Indians. Tribal purchases are directly supervised.

This administrative scheme for carrying out the trading laws is presumptively lawful. *Northern Cheyenne Tribe* v. *Hollowbreast,* 425 U.S. 649, 660 (1976); *United States* v. *Jackson,* 280 U.S. 183, 193 (1930). Arizona has provided no valid basis to question the Bureau's manner of supervising Indian trade. For these reasons the difference in the form of federal supervision between *Warren* and the present case did not give taxing jurisdiction to the State here.

4. Central Machinery's Permanent Place of Business Is Immaterial.

Arizona has argued that *Warren* may be distinguished because there the seller had a permanent place of business on the reservation, while Central Machinery's permanent place of business is outside the Gila River Reservation at Casa Grande, Arizona. The State has also relied on the fact that some "dealer preparation" work on the farm machinery was performed at the Casa Grande location.

Arizona cannot seriously contend that Central Machinery's lack of a permanent place of business on the reservation without more gives the State taxing jurisdiction. Nothing in *Warren* or the statutes it interpreted supports such a requirement. The statutes and regulations are applicable according to the location of a commercial transaction; the permanent business headquarters of the seller is relevant only to the degree of supervision required. *See* Sec. A.3., *supra.* If a visiting

seller from another state, Indian reservation, or foreign country had made the sale at issue, the statutes would apply, and the *Warren* rule would preclude Arizona's tax.[32]

Arizona thus appears to rely on its authority over Central Machinery's off-reservation place of business and on the "dealer preparation" work there to give it the taxing jurisdiction otherwise denied by *Warren*. But Arizona's tax is measured by the aggregate value of sales transactions subject to state jurisdiction. It is not measured by the value of Central Machinery's property at Casa Grande, nor by the value added to the machinery by dealer preparation work. Property and value-added taxes might present different issues.

An analogous argument was rejected by the district court in *Confederated Salish & Kootenai Tribes* v. *Montana*, 392 F.Supp. 1325 (D. Mont. 1975) (3 judge ct.), *aff'd*, 425 U.S. 463 (1976). Montana argued that it had jurisdiction to impose its *ad valorem* property tax on automobile ownership by reservation Indians, because the Indians' automobiles were sometimes driven off the reservation. The court rejected the argument because the "tax event" under Montana law was ownership of the vehicle, not highway use. 392 F.Supp. at 1327. In the instant case, the "tax event" was the sale of farm machinery to Gila River Farms.

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[32] In its Motion to Dismiss (at pp. 9-12, 22) Arizona relied on two administrative rulings, 58 I.D. 562 (1943); 57 I.D. 124 (1940), but the Motion misstated the 1943 holding. The transactions held to be taxable were certain off-reservation sales to individual Indians, reversing the contrary view in the 1940 opinion. On sales within reservations, both opinions agreed that state taxing jurisdiction was preempted. 58 I.D. at 563; 57 I.D. at 126. Contrary to Arizona's contention, neither opinion was dependent on the merchant's permanent place of business.

Arizona argues that its tax is a "privilege" tax rather than a "sales" tax. This purported distinction was rejected by the Court in *Warren*. Its only legal relevance is to attempt to designate that the party liable for the tax is the seller alone rather than the buyer or both of them.[33] On that very basis, the Arizona Supreme Court in *Warren* had sustained the tax,[34] but this Court reversed. Consideration of the party liable aside, the tax is measured by the value of the sale; the sale is the "tax event." Arizona expects the tax to be added to the price of the merchandise, and it is in practice. Nor does Arizona attempt to tax resident sellers based on sales transacted in other states or nations.

If the Warren Trade Post Co. had had a second place of business in Phoenix, that could not have changed the result of the *Warren* decision.[35] Or if the Warren Trading Post Co. had made an off-reservation sale of farm machinery to an Indian tribe, Arizona would surely claim the right to tax it notwithstanding the company's federal license and on-reservation place of business.[36]

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[33] This concept has been called "incidence" of the tax, *e.g.*, First Agricultural Nat. Bank v. State Tax Comm'n, 392 U.S. 339, 347 (1968).

[34] Warren Trading Post Co. v. Moore, 95 Ariz. 110, 387 P.2d 809, 812 (1963), *reversed sub nom.* Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U.S. 685 (1965).

[35] The opinion in that case did not indicate whether the Warren Co. had other places of business outside the Navajo Reservation. Implicitly, that was not deemed material.

[36] As we indicated under part A.1 above, federal regulation of Indian trade has always been much less extensive outside tribal territory. Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973).

To base Arizona's taxing jurisdiction on Central Machinery's off-reservation place of business would also put Central Machinery at a competitive disadvantage to out-of-state sellers lacking any such place of business. It is not reasonable or logical to construe the scope of preemption under the federal Indian trading laws to produce this result.

B. Arizona's Tax Interferes with the Federal Purposes of the Gila River Reservation.

1. The Transaction in this Case Involves Irrigated Farming, the Basic Economic Purpose of the Reservation.

The sale of farm machinery to Gila River Farms involves one of the essential purposes for which the Gila River Reservation was established. In 1859, Congress authorized the President to establish a reservation for the Pima-Maricopa Indions. The reservation set aside for the Tribes included the area where they had traditionally practiced irrigated farming since before white contact.[37]

Gila River Farms is the tribal agricultural enterprise engaged in farming some of the tribal lands around Sacaton, Arizona, that have been farmed by the Tribes for hundreds of years. *See,* Statement of the Case, *supra.* Gila River Farms has been a successful enterprise and is the principal source of income for the Tribes.[38]

The purchase of farm equipment from Central Machinery was undertaken by Gila River Farms in fur-

[37] Gila River Pima-Maricopa Indian Community v. United States, *supra,* 24 Ind.Cl.Comm. at 391.

[38] Federal and State Indian Reservations and Indian Trust Areas 51-52 (U.S. Dept. of Commerce 1974).

therance of its agricultural activities. Taxation of this transaction by Arizona thus impermissibly burdens the basic economic purpose of the reservation itself. *See, Tulee* v. *Washington,* 315 U.S. 681, 684-85 (1942); *Winters* v. *United States,* 207 U.S. 564, 566-67, 576-77 (1908).

Numerous decisions of this Court have consistently recognized the importance of the purposes for which Indian reservations were established and have implied Indian rights and immunities in order to fulfill those purposes. *Arizona* v. *California,* 373 U.S. 546, 594-601 (1963); *Alaska Pacific Fisheries* v. *United States,* 248 U.S. 78 (1918); *Winters* v. *United States, supra; United States* v. *Winans,* 198 U.S. 371, 381 (1905). In the area of taxation, this Court has also consistently held that State taxes which interfere with the purposes for which Indian trust lands are set aside are invalid. *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145, 158-59 (1973); *Tulee* v. *Washington, supra,* 315 U.S. at 684-85; *United States* v. *Rickert,* 188 U.S. 432, 441-43 (1903); *The Kansas Indians,* 72 U.S. (5 Wall.) 737 (1867). Arizona's tax is therefore invalid because it burdens the basic economic purpose of the Gila River Reservation.

2. The Tax Interferes with Tribal Self-Government.

In *Warren,* imposition of Arizona's transaction privilege tax was struck down on the ground that state law had been preempted by comprehensive federal regulation of Indian trade. The tax was also invalidated because it constituted state interference with tribal self-government. 380 U.S. at 686-87. *See McClanahan* v. *Arizona Tax Comm'n,* 411 U.S. 164, 170

n. 6, 172-75 (1973). In *McClanahan,* such interference alone was a sufficient basis to invalidate the imposition of Arizona's income tax on a reservation Indian deriving her income from reservation sources. *McClanahan* was followed in *Moe* v. *Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 480-81 (1976), to invalidate a state cigarette sales tax and personal property tax imposed on reservation sales to Indians.

The right of tribal self-government in each case was paramount. State taxation of Indian activities within a reservation was held to be impermissible in the absence of congressional consent. *McClanahan* v. *Arizona Tax Comm'n, supra; Mescalero Apache Tribe* v. *Jones, supra,* 411 U.S. at 148.

When the Gila River Reservation was set aside in 1859, the Pima and Maricopa Indians, like the Navajo Tribe in *Warren,* were left to govern themselves and allowed to live according to their customary ways and traditions without interference.[39] The area was set aside for the Pimas and Maricopas as an area within their exclusive sovereignty, subject to federal supervision. As the Court noted in *McClanahan, supra,* 411 U.S. at 175-76, the right of tribal self-government was preserved in the Arizona Enabling Act, 36 Stat. 569

[39] *See* Gila River Pima-Maricopa Indian Community v. United States, *supra,* 24 Ind.Cl.Comm. at 333.

(1910). Under the principles set out in the opinions in *Warren* and *McClanahan,* state taxation of Indians or tribes within a reservation constitutes interference with tribal self-government and is invalid.

Moreover, Arizona's tax necessarily conflicts with any tax which the Tribe might impose on merchants doing business within the reservation. The power of tribal governments to enact such a tax was sustained in *Buster* v. *Wright,* 135 F. 947, 949-51 (8th Cir. 1905), *appeal dismissed* 203 U.S. 599 (1906); *see Maxey* v. *Wright,* 3 Ind.T. 243, 54 S.W. 807 (1900), *affirmed* 105 F. 1003 (8th Cir. 1900). Congress has acted affirmatively to encourage Indian tribes to exert their powers of self-government and to pursue economic development. *See* Indian Reorganization Act of 1934, 25 U.S.C. 461-479; Indian Self-Determination and Assistance Act of 1975, 25 U.S.C. 450 *et seq.;* Indian Financing Act of 1974, 25 U.S.C. 1451 *et seq.* The Gila River tribal constitution specifically authorizes tribal taxation of nonmembers doing business within the reservation (subject to approval by the Secretary of the Interior). Const. of the Gila River Indian Community, art. XV, § 1(b)(3), under the Indian Reorganization Act, 25 U.S.C. 476. The lawful objectives of a tribal tax on merchants doing business within the reservation would be frustrated by the imposition of a state tax on the same activity.

CONCLUSION

For the reasons stated, the decision of the Arizona Supreme Court should be reversed.

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